

EXHIBIT 4

1

7clPdanC

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DANIELS,

4 Plaintiff,

5 v.

6 THE CITY OF NEW YORK,

7 Defendant.

8 -----x

New York, N.Y.  
December 21, 2007  
4:50 p.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

25 SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7clPdanC

1 (In open court)  
2 MS. GROSSMAN: Your Honor, may I just bring one issue  
3 to your attention?  
4 THE COURT: Not until I reach you.  
5 Good afternoon, Mr. Moore.  
6 MR. MOORE: Good afternoon, Judge.  
7 THE COURT: Good afternoon, Ms. Costello.  
8 MS. COSTELLO: Yes, good afternoon, your Honor.  
9 THE COURT: Mr. Franklin.  
10 And who is the person in between all of you?  
11 MS. COSTELLO: Your Honor, this is Garrett Wright, he  
12 is a recent law graduate from our office.  
13 THE COURT: And good afternoon, Ms. Grossman and Ms.  
14 Donahue.  
15 Yes, what is it?  
16 MS. GROSSMAN: There may be some reference to some  
17 confidential material during our conference, and I just wanted  
18 to bring that to the Court's attention, in that we believe the  
19 courtroom might have to be sealed for a very brief moment. For  
20 now, plaintiff's counsel is not prepared to raise those issues  
21 while we have other people here in the courtroom.  
22 I think we are fine to keep the courtroom open.  
23 THE COURT: I know who two of the people are, they are  
24 here on the criminal case. Who are the other people?  
25 A VOICE: We are with the Center for Constitutional  
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

7clPdanC  
Rights.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Are you both attorneys?

A VOICE: I am an attorney.

I am a paralegal.

THE COURT: They are -- I understand your point. As soon as I can, I'd be happy to get the criminal case out of the courtroom. As soon as I can.

Let me get started on this matter of Daniels versus The City of New York.

I have a letter from the plaintiffs dated December 14, 2007. And they are seeking a number of things. But I suppose on the most immediate basis they are seeking some kind of an order extending the Court supervision by no less than a few months, for the sole purpose of letting them fully brief the request for relief in this letter. So there is no rush.

So they are saying, the best way to have no rush and have no air is to have the defendant consent to a two-or-three month adjournment minimally, just so everybody can get these issues fully briefed and on the table. And if the Court denies all the relief, so be it.

But rather than have them work it out in eight or nine days, you are saying just to get some kind of interest of justice extension or something.

So I won't go into the rest of the relief they seek, more in terms of summarizing the letters, but the largest

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7clPdanC

1 overall summary is that there has been a lack of compliance in  
2 various ways with the stipulation of settlement. And so the  
3 Court should modify the stipulation of settlement order,  
4 specific performance of certain aspects of the stipulation of  
5 settlement.

6 And then they ask for the third point of relief, which  
7 is what I think you were referring to, where they think there  
8 should be a modification of the protective order as to some of  
9 the terms that have been declared confidential.

10 One reason is they say the Court will have to use some  
11 of the confidential information to determine what to do with  
12 the motion. But, secondly, they are saying some of it has been  
13 disclosed by the defendant in another context, and it is  
14 already much discussed, and you should withdraw the designation  
15 if it has been publicly disclosed.

16 Then I received a letter in response dated December  
17 19, but actually received in chambers December 20, which was  
18 yesterday. And yesterday was a relatively busy day on the  
19 bench. So the long and short of it, I haven't had a chance to  
20 study the attachments carefully. But I did have the  
21 opportunity to read the letter, which itself was long, I guess,  
22 the pages aren't numbered so I can't tell how many, there is a  
23 lot of single-spaced pages, five or six. And I did read them.

24 And the quick summary of the defense letter is that  
25 plaintiffs want to pretend that the settlement agreement says

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7clPdanC

1 things it doesn't say. So the alleged breaches aren't breaches  
2 at all, because the settlement doesn't require the defendant to  
3 do what the plaintiffs say is a breach.

4 And defendants write a number of times in the letter,  
5 plaintiffs may have wanted the stipulation of settlement to say  
6 these things, but it doesn't. And there were intense and  
7 detailed settlement negotiations. And if they didn't get what  
8 they didn't get, they can't complain about it now.

9 And so the defendant opposes all the requests for  
10 relief, opposes any modification of the stipulation, opposes  
11 any order for specific performance, opposes any extension of  
12 the December 31 deadline, and opposes the modification of the  
13 protective order.

14 All of that said, it would nonetheless be helpful to  
15 the Court and all the parties, in the nine days remaining  
16 between now and the 31st of December, to be -- deny this in an  
17 orderly fashion by extending the deadline.

18 If the defendant refuses to do that, then the city is  
19 will write briefs every day for the next nine days. And if  
20 that's how you want to spend your Christmas and New Year's,  
21 that's up to you.

22 You may have the better of all the arguments, but I  
23 need to get enough of a record to figure it out. And if you  
24 want to do that much all through Christmas and New Year's.

25 Who is carrying the lead?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7clPdanC

1 MR. MOORE: Ms. Costello.

2 THE COURT: Well, Ms. Costello, I think you have  
3 sought of the burden to make your oral argument the equivalent  
4 of a reply letter. I think you need to answer all the points  
5 that Ms. Grossman made in her very thorough submission point by  
6 point. Because her points, as you notice, stay closely away  
7 from the merits, so to speak. And they try not to tell me  
8 about whether or not, you know, there is a policy of  
9 discrimination, or whether your statistics show discrimination.  
10 They want to talk procedure and they want to talk about what is  
11 or isn't in the stipulation. What rights you have or don't  
12 have in the stipulation.

13 And I understand that is a contract and they are  
14 saying, no matter how bad things may be, that's not part of  
15 this lawsuit.

16 Do you have another lawsuit to bring?

17 But they placed some interesting alliance on the  
18 Latino Officers Association of The City of New York, where they  
19 quoted the Court as denying any further relief. And they  
20 thought that was a pretty good precedent for them. And it did  
21 seem to be a pretty good precedent for them.

22 For example, at one point the Court -- now there is no  
23 guarantees in discrimination in the settlement document, and  
24 that Court said, quote, even a convincing demonstration of  
25 persistent discrimination would not mean that the defendants

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7

7clPdanC

1 are violating the provisions of the settlement agreement.

2 That, sort of, is exactly the situation I may be in.

3 You may be sort of seeing problems that are all very  
4 interesting but not part of this settlement agreement. So I  
5 think you need to give me a reply brief, if you wish, orally.

6 MS. COSTELLO: Yes, your Honor. I can try my best.

7 One point that the city raises about just the fact  
8 that there are no in substantial remedies in the consent  
9 decree.

10 THE COURT: I have the consent decree. I think  
11 somebody attached it as Exhibit A.

12 MS. GROSSMAN: Yes, your Honor.

13 THE COURT: So you are going to have to show me, don't  
14 tell me you disagree, show me the language.

15 MS. COSTELLO: In section C1, your Honor, in section  
16 C1.

17 Let me just back up one second, your Honor. I think  
18 there were two ways, and this is part of what we would like to  
19 brief for the Court, there are two ways that the Court could  
20 extend the life of the consent decree and also grant our  
21 request for modification. One is within the Court's equitable  
22 powers and the second is standard under Ruffo for modification.

23 I think what Ms. Grossman's letter focuses on is the  
24 straight reading, the non-compliance and specific performance  
25 and contempt proceeding that would result, flow from that which

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300



7clPdanC

1 the dispute resolution mechanism in the agreement itself, if  
2 you look at the standard under Ruffo, a much more flexible  
3 standard that takes into account the public interest and the  
4 change in circumstances. The city doesn't address that at all.

5 THE COURT: No, they never cite Ruffo, I don't think  
6 they did. I read it fairly quickly.

7 MS. COSTELLO: Under the standard in Ruffo, we think  
8 that the modification would be appropriate.

9 Putting that aside for the moment, and just looking at  
10 the language of the consent decree, section C1 of the  
11 stipulation requires that the NYPD shall have a written policy  
12 regarding racial or ethnic or national origin profiling, that  
13 complies with the United States Constitution and the New York  
14 State Constitution.

15 And I think that we have shown that there is evidence  
16 of racial profiling going on.

17 THE COURT: Even if there is evidence of racial  
18 profiling, that paragraph doesn't have anything to do with  
19 that.

20 It says that the NYPD shall have a written policy that  
21 complies with the Constitution of both the United States and  
22 New York State. Okay, that's what they have to have.

23 Do they have -- let me give you an example, let's say  
24 they had a written policy that complies with it, and that they  
25 violated it all the time. They wouldn't have violated

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7clPdanC

1 paragraph 1. Paragraph 1 says you have to have a written  
2 policy that complies with the --

3 MS. COSTELLO: -- if you read paragraph C1 in  
4 connection with, which requires training on the policy,  
5 training on the officers in stop and frisk procedures, in  
6 section E there is a provision in there for palm cards which go  
7 out to individuals in the community. If they believe they have  
8 been improperly stopped and frisked they can file a complaint  
9 with the Civilian Complaint Review Board.

10 We think that all of that means there was an  
11 implication of this policy --

12 THE COURT: -- you are asking me to rewrite your  
13 settlement agreement. This is hypothetical, it is not a fact.

14 I don't want anybody to be confused by reading the  
15 record. I am saying hypothetically if they have a written  
16 policy that complies with the Constitution of the United States  
17 and of New York State, regarding racial and ethnic origin  
18 profiling, they satisfied number 1, paragraph C1.

19 Even if there were evidence that they were violating  
20 their own policy, they still say that.

21 Number 1 only requires them to have appropriate  
22 written policy.

23 That seems to be the whole point of this notion that  
24 there is no guarantees in this agreement. Nowhere in the  
25 agreement is the city guaranteed that it will not have an

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

10

7clPdanC

1 inappropriate racial profiling. There is no guarantee in here.  
2 It is exactly the same thing that Judge Kaplan was trying to  
3 say.

4 MS. COSTELLO: If you look at section C2, which says  
5 that the NYPD may alter the policy --

6 THE COURT: -- let me read that.

7 It says: (Reading) The NYPD may alter the racial  
8 profiling policy at any time in compliance with paragraph C1.

9 That just means if they have the policy that isn't in  
10 compliance, and they want to make a written policy that is in  
11 compliance, I don't see that number 2 provides you the  
12 guarantee that you seem to be talking about.

13 MS. COSTELLO: I think number 2 also relates to  
14 altering the policy. And I think that the intent of this  
15 agreement was not to bargain for a policy that meant nothing  
16 that the NYPD could just go out and violate people's Fourth  
17 Amendment rights and Fourteenth Amendment rights with no  
18 recourse to plaintiffs. I think that would --

19 THE COURT: -- maybe it is an -- why don't you file a  
20 lawsuit?

21 MS. COSTELLO: We did, we are here.

22 THE COURT: No, you are struggling with the December  
23 31, 2007 deadline in a 1999 case. And if you got proof of  
24 inappropriate racial profiling in a good constitutional case,  
25 why don't you bring a lawsuit? You can certainly mark it as

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

11

7clPdanC

1 related.

2 How could it not be related to this whole long seven  
3 or eight years we have lived together on this case? Because  
4 you are trying to put a square peg in a round hole. And trying  
5 to force yourselves to argue what the settlement means, that it  
6 doesn't mean if you have a timely lawsuit -- you seem to have  
7 compiled interesting arguments Ms. Grossman has not rebutted --  
8 maybe she did, that's why we didn't do something, because we  
9 didn't want them to write this letter, she -- let's just say  
10 she hasn't substantially responded to your letter. If one had  
11 only your letter, it would look like you have a lawsuit. So  
12 instead of struggling to telling me about a stipulation of  
13 settlement, why don't you craft a lawsuit?

14 MS. COSTELLO: We could, but the only other issue  
15 is --

16 THE COURT: That's what would I like to turn to.  
17 Can we talk about the noncompliant?

18 MR. MOORE: Judge, could I just say a few things,  
19 before we do that? About the notion that what we were  
20 bargaining for was simply a piece of paper that had no  
21 substance to it.

22 THE COURT: I didn't say it had no substance. But it  
23 didn't have the word guarantee. Didn't she write in her letter  
24 there were no guarantees? And Judge Kaplan talked about that  
25 in his settlement. I didn't have time to read his decision, I

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

12

7clPdanC

1 only read these two letters. Sometimes a Judge has some time  
2 and sometime not. I didn't have a lot of time, especially the  
3 city's letter just came in yesterday.

4 MR. MOORE: To the extent that given my involvement  
5 with the case in the beginning, I can shed any light on that,  
6 on what our understanding was, about what we were bargaining  
7 for.

8 We believed that we were getting a policy that the  
9 city would put into effect. That was, it is reason why we  
10 brought the lawsuit. And certainly as Ms. Costello said, there  
11 were not just -- they didn't just agree to change the written  
12 policy, they agreed to do several things.

13 THE COURT: But we have to find them chapter and  
14 verse, because their argument -- I'd like to interrupt you just  
15 for a minute, and take this criminal case.

16 (Recess)

17 THE COURT:: I think you were speaking, Mr. Moore.

18 MR. MOORE: I had been making a general observation  
19 about my understanding in the course of our negotiating this  
20 decree.

21 I find it hard to believe that The City of New York  
22 would, in effect, say to this Court, or to anybody, well, we  
23 have a policy, but we don't have to follow it.

24 THE COURT: I was saying as a hypothetical. I didn't  
25 say they said --

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

13

7clPdanC

1 MR. MOORE: -- I think they say that in their letter,  
2 that we can change the policy -- we can -- as long as we have a  
3 written policy, we can essentially do whatever we want.

4 I just think that if that's, in fact, what the  
5 position of the city of New York is, it is a significant  
6 difference from what we understood we were getting, which was a  
7 policy that had some substance to it. Not just a policy on  
8 paper.

9 It's sort of like passing the Thirteenth Amendment  
10 abolishing slavery as long as we have an amendment that you  
11 can't have slavery. But in practice we still have slavery.

12 It seems to me it is a hyper technical interpretation  
13 of the words in the decree. The decree was meant to address  
14 what we believed was a serious issue with respect to racial  
15 profiling which, apparently, has not gone away. And even their  
16 own Rand study that they commissioned, suggests that at least  
17 with respect to the frisks, maybe not the stops, but even the  
18 frisks, that there is a racial disparity, that's their own  
19 expert's testimony, their own expert's report.

20 So I just find the notion that we were tying to  
21 basically engage in a law school exercise of getting a policy  
22 that had no substance --

23 THE COURT: -- well --

24 MR. MOORE: -- contrary to my understanding and  
25 contrary --

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

14

7clPdanC

1 THE COURT: -- I will quote from page 4 of the letter,  
2 the first full paragraph.

3 (Reading) In conclusion, it is important to state  
4 that plaintiffs vigorously bargained for a provision which  
5 would create for an obligation on the part of the defendants to  
6 guarantee that there would be no racial profiling. The city  
7 refused to agree to such a term for reasons here are  
8 negotiated.

9 MR. MOORE: I don't know, there is no citation to  
10 that, there is no -- it is sort of, in a way, it was -- maybe  
11 it was by being silent they hoped that we wouldn't say to you,  
12 say to the city, and you are going to comply with that, you are  
13 going to actually implement the policy.

14 I don't think -- I mean, a municipality that agrees to  
15 adopt a policy should be then saying, now that we have adopted  
16 a written policy, we don't have to implement it in practice.  
17 When, in fact, they were making -- they were, you know, there  
18 was information sent out that there was a racial --

19 THE COURT: -- what I am trying to say -- I am sure I  
20 am going to get in trouble for saying it, for \$65 you can bring  
21 that lawsuit. You can simply --

22 MR. MOORE: \$350.

23 THE COURT: I knew I had it wrong.

24 The city violates its own written policy, the city has  
25 a policy that violates -- they have violated their policy, here

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

15

7clPdanC

1 is the proof of it, please give us the remedy. Injunction or  
2 damages, or whatever lawyers ask for in compliance.

3 So for \$350 you can bring that lawsuit and it is  
4 timely.

5 I don't understand why we have to potentially have,  
6 you know, months of briefing when it does fit under this  
7 stipulation or it doesn't, that Ruffo applies or it doesn't  
8 that the Court has the power to extend the supervision, that we  
9 want an immediate appeal to the circuit. Why do you need that  
10 if you have a lawsuit? Bring it. They have a written policy,  
11 right?

12 MS. GROSSMAN: Yes, your Honor.

13 THE COURT: If you think they are violating their  
14 written policy, sue them.

15 MS. COSTELLO: Your Honor, just two quick points. One  
16 is about the point your Honor's raising about just filing a new  
17 lawsuit.

18 The one issue for us in that particular scenario is  
19 that the protective order is still in effect. Once this case  
20 ends, we have to give back all of the data. So unless the  
21 Court is prepared to modify the protective order and lift it,  
22 we would not have the benefit of that data until we filed a new  
23 case and engaged in discovery and battles with the city to get  
24 that same information again, and then another battle over a  
25 protective order again.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300



16

7clPdanC

1 So we see it in the interests of judicial economy, if  
2 the Court would lift the protective order in this case, since  
3 under the language of the stipulation -- and we pointed, if the  
4 information is otherwise made publicly available.

5 THE COURT: That's something I do want to talk to the  
6 city about.

7 If it is publicly available, then I don't understand  
8 why you can't use publicly-available information in drafting  
9 your suit, or for whatever other purpose. If something is  
10 publicly available and I can get it and anybody who is in the  
11 public library can get it, or using the Internet can get it, if  
12 anybody calls the city's green book office, can get it, then it  
13 is public.

14 Can you do this from public information or not?

15 MS. COSTELLO: It is not that publicly available.

16 THE COURT: You can't have it both ways. If it is  
17 public you can use it and I don't think the city can ever argue  
18 that you can't.

19 Once you backtrack and say it is really not public,  
20 then you are making their argument.

21 MS. COSTELLO: It is public. The only problem is that  
22 the information that the city has put out, just as Ms.

23 Grossman's letter said, it is our data, we can use it however  
24 we would like to. The information that's been put out by the

25 Rand Corporation, and we have a copy of the study, is that the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

17

7clPdanC

1 Rand Corporation and the NYPD's spin using magic wands about  
2 what the data means, our analysis and conversation with an  
3 expert shows us different things, that the Rand information has  
4 used benchmark and other statistical methods to explain away.  
5 So it is publicly available in the sense that the NYPD and the  
6 Rand publication has written details in the Daily News and  
7 otherwise made that information available. But in the sense  
8 the data that we have that may differ from what the city has  
9 put out, is not publicly available. Because that's our  
10 analysis and that's our impressions and our statisticians and  
11 numbers of what the patterns show.

12 So our information is different than what the city  
13 has, some of which is the same.

14 Rand reached some of the same conclusions about the  
15 data. But they have also ignored some of the other  
16 information, particularly racial disparities and the frisks  
17 leading to arrests and the weapons recovery that we think are  
18 indicative of racial profiling.

19 MR. FRANKLIN: Your Honor, in terms how the data is  
20 collected, we have the data on discs from the city, which makes  
21 it that much easier to compute.

22 This information is public, but it is public in hard  
23 copies. And so it is public not only through the Rand study,  
24 but also through the study that they, the city, gave to the  
25 city counsel. But they are both access to the data is here,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

18

7clPdanC

1 but it is in a format which is highly unusable in terms of  
2 making statistical analysis and breaking down data, which would  
3 take us months to recompile.

4 THE COURT: As I was saying earlier, Ms. Costello  
5 responded with how difficult it would be to get the material  
6 again. There is enough in the public record to craft the suit.  
7 And then in that suit simply say, we want produced all that was  
8 produced in the 1999 lawsuit.

9 I don't know how you could lose getting it. It may be  
10 a question of whether it is still going to be under protective  
11 order or not. But I can hardly imagine not getting it. You  
12 know what I am saying? It is so obvious to me that any Judge  
13 would require them to reproduce it to you in the same format  
14 that you have it, that you will have it again. Whether or not  
15 it remains confidential.

16 MR. FRANKLIN: We'll have it again, but we have to go  
17 through the same process we have gone through. We have to turn  
18 everything back to the city under this protective order. So if  
19 we get it back we have to again recalculate the same  
20 information that we already have.

21 THE COURT:: You have to go through recalculating?  
22 Why would that be?

23 MR. FRANKLIN: Because under the protective order we  
24 have to give them back that information.

25 THE COURT: Not just what they gave you?

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

19

7clPdanC.

1 MR. FRANKLIN: If my reading is correct, it's what  
2 they gave us and --

3 MS. COSTELLO: -- everything derived from the UF250  
4 database. So it is the actual physical discs that the data is  
5 contained on, which are thousands and -- tens -- hundreds of  
6 thousands of entries, as well as any information that we  
7 derived. So any of the work that our statistician has done  
8 with coding, would have to be given back to the city. We  
9 couldn't retain that information.

10 THE COURT:: Your attorney work product and published  
11 material, all that stuff would have to go back?

12 That seems odd to me. I don't know why it can't be  
13 stored under the terms of confidentiality. This is not  
14 practical.

15 MS. COSTELLO: Your Honor, if I could, I am just going  
16 to take one minute and look at the protective order to make  
17 sure.

18 MR. FRANKLIN: Unless the city disputes that.

19 THE COURT: We aren't getting too far off the  
20 substance, are we?

21 MR. MOORE: Judge, the protective order --

22 THE COURT:: -- where is that? Do I have that?

23 MR. MOORE: I don't think you have a copy.

24 THE COURT: Do you have that, Ms. Grossman? Is that  
25 attached --

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

20

7clPdanC

1 MS. GROSSMAN: -- your Honor --

2 MR. MOORE: -- I can hand you up a copy, Judge.

3 THE COURT:: This is June 31, 2000 -- I'm sorry --  
4 January 31, 2000. Yes, it will be eight years this January.

5 MR. MOORE: Paragraph 7, I think, is the provision  
6 that is at issue here.

7 THE COURT:: Let's read it. (Reading) Within 30 days  
8 after the termination of this case, including any appeals, the  
9 confidential materials, including all copies, notes and other  
10 materials containing or referring to information derived  
11 therefrom, shall be returned to the producing party's  
12 attorneys, or upon their consent, destroyed. And all persons  
13 who possess such materials shall verify their return or  
14 destruction by affidavit furnished to the producing party's  
15 attorneys. And paragraph 8 says: (Reading) The terms of this  
16 order may be modified by further order of the Court.

17 So obviously 30 days after termination of this case is  
18 January 30, 2008, right? If the case terminates December 31 --

19 MS. GROSSMAN: -- I think, your Honor, the termination  
20 date was the termination when we entered into the effective  
21 date of the agreement.

22 THE COURT: It couldn't be, because -- they would have  
23 owed this stuff back to you years ago.

24 MS. GROSSMAN: They did. They returned all documents  
25 they were required to return when the agreement was executed,

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

21

7clPdanC

1 and when it was finalized by the Court.

2 So the agreement incorporates the protective order and  
3 basically says that the plaintiffs need to return the  
4 documents, maintain the confidentiality, and return them after  
5 the agreement sunsets. That's expected after the agreement  
6 terminates.

7 The protective order was, the plaintiffs were subject  
8 to the protective order, to maintain the confidentiality,  
9 but --

10 THE COURT: -- I am not following you at all.

11 I still say they don't have to return all that they  
12 now still retain until January 30, 2008, thirty days after the  
13 termination of this case.

14 I am still supervising this case, that's why you are  
15 worried about my extending it even one day, because my  
16 supervision runs out on December 31, '07. So I still have this  
17 case. So, therefore, it is not 30 days after the termination  
18 of this case. They are talking about the very material they  
19 have --

20 MR. MOORE: We got material --

21 THE COURT: -- as recently as October. So, of course,  
22 you didn't return it 30 days after the case number was closed.  
23 Obviously it is not due back till January 30 or 31st of 2008.

24 All I am saying is, by then if you have a lawsuit  
25 pending and need the very same material, and I have the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

22

7clPdanC

1 authority to modify the terms of this order by a further order  
2 of the Court, which the city agreed to, then I will, and I will  
3 say, you have the material, hold on to it, remains  
4 confidential, somebody says otherwise, and use it as you need  
5 to use it in your new lawsuit.

6 I don't want to play games here, if there is a  
7 violation of the city's racial profiling policy -- that's not  
8 what it is called,.

9 MR. MOORE: That's what it is called.

10 THE COURT: Okay. Strange. Kind of a --

11 MR. MOORE: -- it should be nonracial.

12 THE COURT: Yes. If there is a violation of it, there  
13 is a violation, and that's a lawsuit, and that's that.

14 It still strikes me as making it more difficult, a  
15 square peg in a round hole, to force it into this stipulation  
16 of settlement, and got into all these questions about you tried  
17 to get a guarantee.

18 You didn't get a guarantee, you fought for it, but  
19 they stood firm and they didn't get it to you. La, la, la.  
20 But okay, this is only the beginning. We can go through their  
21 whole letter and respond to all their points. We didn't get  
22 too far. You were going to -- we started with C1.

23 MR. MOORE: Just one second, Judge.

24 THE COURT: Yes.

25 (Discussion off the record)

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

23

7clPdanC

1 MS. GROSSMAN: Your Honor, if I may just address the  
2 issue of the confidentiality.

3 THE COURT: Yes.

4 MS. GROSSMAN: If you were to look at paragraph 4 --  
5 I'm sorry, H4.

6 THE COURT: What stipulation of settlement, A4?

7 MS. GROSSMAN: H4.

8 THE COURT: Yes, okay.

9 MS. GROSSMAN: If you would bear with me, your Honor.  
10 If I could just walk you through the first and explain what it  
11 refers to. The first on paragraph 4 page 11 it says, all  
12 confidential documents --

13 THE COURT: -- wait a minute, I am on page 11 -- oh,  
14 H, okay.

15 MS. GROSSMAN: (Reading) All confidential documents  
16 subject to the January 31, 2000 protective order, and copies  
17 made thereof, produced to plaintiffs by defendants prior to the  
18 effective date, shall be returned to the Corporation Counsel's  
19 office upon the effective date. Unless prior to that date  
20 defendants have expressly authorized the retention of specific  
21 documents itemized in writing by plaintiffs until, at the  
22 latest, the termination of the stipulation.

23 Now, let me just take a break. That information was  
24 all the documents provided during the litigation. The  
25 plaintiffs complied with that provision in the agreement and

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300



24

7clPdanC

1 returned all the documents to the city with the exception of a  
2 few items that they wrote -- put in writing, and they were  
3 allowed to maintain.

4 Now we move on to all documents provided to plaintiffs  
5 in any form by defendants under the terms and during the course  
6 of this stipulation shall be deemed confidential, and  
7 plaintiffs shall return to the Corporation Counsel's office all  
8 such documents, and any copies made thereof, upon the  
9 termination of this stipulation.

10 So at the very least we know that posteffective date  
11 of the agreement, the plaintiffs, under the terms of this  
12 agreement, which they contracted for, which we all agreed to,  
13 are to be returned to the city.

14 THE COURT: Well, that's good, but I don't think it is  
15 good enough. Because I think the Court's order is ambiguous or  
16 contradictory to that by saying that it extends to 30 days  
17 after the termination of this case.

18 Now, you want to interpret the phrase termination of  
19 this case differently than I do. I don't have it in front of  
20 me, I will find it. Actually it is attached to this in the  
21 protective -- the protective order --

22 MR. FRANKLIN: -- it's the last attachment.

23 THE COURT: I have it dated January 31, 2000. Is that  
24 part of the stipulation of settlement -- yes, it must be,  
25 Exhibit C to the stipulation of settlement. And the exhibit

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

25

7clPdanc

1 itself says, the very date of the termination of this case. So  
2 I have essentially two clauses of the same stipulation of  
3 settlement that disagree. And --

4 MR. MOORE: -- essentially what we are talking about  
5 is 30 days.

6 THE COURT: Oh, I understand. But the city does not  
7 want you to have these to be able to craft this complaint. And  
8 it also seems childish to me. It is in your letter, it is all  
9 there already.

10 As I say, I have got two conflicting clauses in front  
11 of me, they are both part of the settlement,.

12 MS. GROSSMAN: I believe, your Honor, if you were to  
13 look at paragraph 4, the plain meaning --

14 THE COURT: -- 4?

15 MS. GROSSMAN: -- the same --

16 THE COURT: -- H4.

17 MS. GROSSMAN: H4.

18 THE COURT:: I know what H4 said, I don't even argue  
19 that it is wrong, but it conflicts with Exhibit C. Exhibit C  
20 tells me that within 30 days of termination of the case, and I  
21 say this case is open until the Court's supervision ends on  
22 December 31 of 2007 --

23 MR. MOORE: -- Judge --

24 THE COURT: -- and it says that I have the power to  
25 modify that protective order at any time.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

26

7clPdanC

1 In terms of this -- by further order of the Court.

2 So I certainly have the power to modify that

3 protective order until December 31 of '07.

4 And so to that extent, I surely would modify it to my

5 own reading of it, which is 30 days after the case terminates,

6 which is January 30, '08.

7 I am happy to keep going with your letter if you want

8 to go through chapter and verse, and try to still make your

9 points in your letter, try to convince me. I don't like the

10 idea of having to work on it in the next eight days under that

11 gun. But that's what it is coming to. It does not seem to me

12 that would be.

13 MS. COSTELLO: Your Honor, putting aside the issue of

14 the modification as it relates to the racial profiling issues.

15 THE COURT: Let's turn to something else then.

16 MS. COSTELLO: The specific performance issues other

17 than that which would include the training.

18 THE COURT:: Let's talk about it. The city wrote

19 about that too. I don't see a subheading actually called

20 training.

21 Ms. Grossman can tell me where in this letter it is?

22 MR. MOORE: Subsection C.

23 THE COURT: Subsection C. There it is, training,

24 okay.

25 MS. COSTELLO: Basically under the agreement section,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

27

7clPdanC

1 and I will point the Court to C5, and actually section E, of  
2 the stipulation --

3 THE COURT: -- E is the one they refer to?

4 MS. COSTELLO: Yes.

5 THE COURT: Training.

6 MS. COSTELLO: We've had several conversations with  
7 the city through letters and verbally about the fact that there  
8 has never been any verification that the training specified in  
9 section E has occurred.

10 The city's position is, as I understand it, is that we  
11 are not entitled to it. And we would disagree with that.

12 THE COURT: Let's look at the plain language of the  
13 settlement agreement.

14 I don't know how much we are going to have to read,  
15 but we will read as much as we have to.

16 1: The NYPD has conducted in-service training  
17 regarding the racial profiling policy, which has been presented  
18 to NYPD commands. The NYPD shall provide annual in-service  
19 training regarding the racial profiling policy.

20 2: The NYPD shall maintain that portion of the police  
21 academy curriculum that pertains to training regarding the  
22 racial profiling policy.

23 3: The NYPD shall continue to train police officers  
24 about the legal and factual bases for conducting and  
25 documenting stop, question and frisk activity. Continue to

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

28

7clPdanC

1 implement the police academy curriculum for training police  
2 officer recruits about the legal and factual bases for  
3 conducting and documenting stop, question and frisk activity.  
4 And continue to provide training for police academy  
5 instructors.

6 MR. MOORE: -- Judge --

7 THE COURT: -- about the legal and factual bases for  
8 conducting for and -- and then all I can say is that paragraph  
9 4 says, the NYPD shall continue to train, and 5 says the NYPD  
10 shall continue to provide training.

11 Number 6 says, the police academy will continue to  
12 consider informally, factual incidents brought to its attention  
13 for use in training.

14 7 says, the NYPD is reviewing the recruit curriculum  
15 and is part of the process, the Commissioner will conduct a  
16 review.

17 8 says, the NYPD will continue to provide full  
18 promoted sergeants and lieutenants with training,

19 9: The municipal defendants have provided to -- and  
20 10 says: The NYPD shall continue to document training provided  
21 for in this stipulation in the same manner and consistent with  
22 existing practices and procedures employed by the NYPD.

23 Now, I have read it all. Nowhere does it say they  
24 will turn anything over to class counsel or report to class  
25 counsel.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

29

7clPdanC

1 MR. MOORE: To verify, the word verification does not  
2 appear.

3 THE COURT: Or report or turn over --

4 MR. MOORE: -- if you look at subsection C5 of the  
5 agreement.

6 THE COURT: Okay, let me now turn to C5.

7 The NYPD shall supervise, monitor and train officers  
8 regarding the racial profiling policy as set forth below.

9 MR. MOORE: So that's an affirmative duty on the NYPD.

10 THE COURT: That's true.

11 MR. MOORE: To supervise, monitor and train officers  
12 regarding the racial profiling.

13 In order to determine whether they are fulfilling  
14 their duty, whether they have lived up to the terms of this  
15 agreement, we would argue that they should tell us what they  
16 are doing.

17 THE COURT: Why didn't you get that into the  
18 agreement? Why didn't you say, shall produce on a quarterly  
19 basis its training materials for counsel's review?

20 There is nothing in there. There are no obligations  
21 other than to do it. But not to let you know through  
22 documentation.

23 MR. MOORE: But if they are not doing it, the only way  
24 we can know if they are not doing it is by asking them if they  
25 are doing it.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

30

7clPdanC

1 THE COURT: I understand.

2 MR. MOORE: It seems to me that that's an inherent  
3 obligation on the part of the city.

4 THE COURT: But this thing was signed January 9, 2004.  
5 I mean, that's almost four years ago. Did you ever write them  
6 a demand letter and say, please document that you are doing  
7 training? Or we believe you are -- or we believe you are not  
8 doing training, we are worried about that, please send us  
9 copies --

10 MS. COSTELLO: -- we did --

11 THE COURT:: -- why are we doing this on December 21  
12 of '07?

13 MS. COSTELLO: We did, your Honor, we asked in April,  
14 and some of those letters were provided to the Court.

15 THE COURT: '07?

16 MS. COSTELLO: Yes, this year. We asked them in  
17 February, in April.

18 THE COURT: For what?

19 MS. COSTELLO: For proof that they were conducting the  
20 training in accordance --

21 THE COURT: -- and their response was?

22 MS. COSTELLO: That they did not read the stipulation  
23 to require it.

24 THE COURT: Why didn't you come to court then? It is  
25 nine days before December 31.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

31

7clPdanC

1 MS. COSTELLO: Part of this, your Honor, is that we  
2 were attempting to work it out with the city. Ms. Grossman and  
3 I, in September, were --

4 THE COURT: -- I hear you. But the position you put  
5 me in is to have some kind of real brief motion, you would like  
6 to brief these issues, you would like to brief Ruffo and its  
7 progeny orally. You want your brief due on 10 a.m. on the 26th  
8 and their brief at 10 on the 28th, and the reply on the 31st?

9 MS. COSTELLO: That's what we proposed, there be six  
10 months of extension.

11 THE COURT: Haven't we been down that road once?

12 MS. COSTELLO: Yes, we have, your Honor. Some of the  
13 cases that we cited before we would still say that the  
14 equitable power of the Court --

15 THE COURT:: Didn't I do it and undo it?

16 MS. COSTELLO: You did undo it.

17 THE COURT: And wrote an opinion too.

18 MS. COSTELLO: Part of that, your Honor, was that we  
19 had not followed the dispute resolution in the decree and we  
20 have --

21 THE COURT: -- they wrote you didn't. Didn't you  
22 write that, Ms. Grossman, they didn't follow the dispute  
23 resolution again?

24 MS. GROSSMAN: That's right.

25 MS. COSTELLO: We disagree.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300



32

7clPdanC

1 THE COURT: But I am not being given much time to  
2 understand that. They are saying you didn't, they are saying  
3 something about 30 days. In what way didn't they file a  
4 dispute resolution --

5 MS. GROSSMAN: -- they were supposed to wait until 30  
6 days to seek relief from the Court.

7 THE COURT: Wait until 30 days from what?

8 MS. GROSSMAN: From the date that they have, gave  
9 notification to us. The notification that they are required to  
10 give is by fax and hand service.

11 THE COURT: And they faxed you a letter.

12 MS. GROSSMAN: Friday evening.

13 THE COURT: December what?

14 MS. GROSSMAN: November 30, Friday evening, 7:03 p.m.  
15 And they did not deliver a document by hand Friday for us to  
16 have notice. And it wasn't until Monday, December 3, there was  
17 no by hand delivery at all. So they haven't complied with the  
18 terms of the agreement in terms of giving proper notice, which  
19 then would bring us beyond the December 31 sunset provision in  
20 terms of when they would be able to seek relief from the Court.

21 The first time they raised the issue about the racial  
22 profiling was on November 30.

23 MR. MOORE: Judge --

24 MS. GROSSMAN: -- the first time they raised an issue  
25 about another item concerning joint community forums was on

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

7clPdanC

1 November 30.

2 THE COURT: Which falls within the 30 days. But you  
3 are saying out of the technicality, the reason that it is  
4 important was because, that's important because you weren't in  
5 the office at 7:03 on a Friday night and didn't see it until  
6 Monday.

7 The city is saying it didn't have actual notice on  
8 November 30, but on December 3.

9 MR. MOORE: We were before you in April, and we were  
10 raising the issues about the fact that they hadn't produced the  
11 database. And, you know, we didn't get that until October.

12 THE COURT: I know --

13 MR. MOORE: -- that sort of sidetracked us a little  
14 bit. And I think, though, that now that we have had the  
15 data --

16 THE COURT:: -- but that didn't relate to things like  
17 not having proof of training, and proof of community forum,  
18 which you didn't think was going on. There were other  
19 complaints that you could have raised in time to get some real  
20 rulings on violations or not.

21 I might have still said at the end of the day, with  
22 respect to training, they undertook no obligation to report to  
23 you, you would argue back, no, but they took on an obligation  
24 to do it, how are we supposed to judge compliance if we can't  
25 get discovery. But discovery is different than a reporting

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7clPdanC

1 requirement.

2 MR. MOORE: I guess it brings me to my other point  
3 which if, in fact, the city is of the opinion that all they  
4 have to do is have a written policy, and they have a written  
5 policy, what harm is there to the city in agreeing to extend  
6 this for two months, three months, whatever it may be, if in  
7 fact, as they say, are all that it requires them to do is have  
8 something on paper that says we won't engage --

9 THE COURT: -- you don't know if they have a written  
10 policy?

11 MR. MOORE: I do know that they implemented a written  
12 policy. There was -- I haven't looked at it in the last few  
13 weeks. But I do believe there is a written policy.

14 My point is that if, in fact, all they are required to  
15 do under this settlement agreement is to have a written policy,  
16 what harm is there in extending this agreement for a couple of  
17 months, for us to resolve these issues and decide, for  
18 instance, decide whether we want to just put this thing to bed  
19 and, you know, start another case. If that's what we want to  
20 do.

21 If we believe that that evidence of racial profiling  
22 is there, you make a very strong point about trying to put a  
23 square peg in a round hole, whatever that might be. But my  
24 point is, what harm would there be -- I guess the answer is,  
25 it's a common-sense argument. It is not a lawyerly argument.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

35

7clPdanC

1 That's the problem.

2 THE COURT: Unfortunately we all chose this  
3 profession, and some days we ask yourselves why.

4 Lawyers have the right to stand on technicalities.  
5 The Supreme Court issued some opinion last year that said, yes,  
6 the federal Judge -- that -- the Supreme Court said you are  
7 time barred, you have to file an appeal ten days after  
8 judgement, telling your attorney you want an appeal is not  
9 enough. You should have listened to that Federal Judge.

10 The consenting Justices were outraged, but there you  
11 have it. The other justices thought it was a fine thing to say  
12 it on the technicality. The District Judge told the prisoner  
13 you have that time. A career prisoner should have known better  
14 than a federal Judge. The law is full of technicalities.

15 Why doesn't the city agree to extend it? Because they  
16 don't want to. And if they don't have to, they don't want to.

17 What am I going to do? Tell them, practically  
18 speaking, he's right, why don't you give us all time to brief  
19 this and decide this? They could say, that's very nice, but we  
20 decline.

21 You want me to get it on the -- would you agree to  
22 extend this two to three months? We can get a briefing  
23 schedule.

24 MS. GROSSMAN: Your Honor, I am not authorized to  
25 agree to that.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

36

7clPdanC

1 MS. COSTELLO: I have one point on the training issue,  
2 Exhibit 1 to our letter, the December 4 letter that I wrote to  
3 Ms. Grossman. If you look at the third page -- page 2 at the  
4 bottom --

5 THE COURT: -- I got a problem, the November 30  
6 letter --

7 MS. COSTELLO: -- no, I'm sorry, the letter that we  
8 delivered to the Court last Friday.

9 THE COURT:: Oh, yes.

10 MS. COSTELLO: Exhibit 1 to that.

11 THE COURT:: Exhibit 1 is the November 30 letter.

12 MS. COSTELLO: Maybe it is Exhibit 2, your Honor.

13 THE COURT: Exhibit 2 is the February 16 letter.

14 MS. COSTELLO: There should be a September 4 letter,  
15 your Honor.

16 THE COURT: That's Exhibit 3. Page 2 at the bottom.

17 MS. COSTELLO: On the next page we explain to the city  
18 that we think they are not in compliance with the training  
19 requirements, just as we thought they were not in compliance  
20 with the auditing of the training requirements.

21 THE COURT: But you didn't bring it to my attention,  
22 is all I am trying to say. Of course, now what you are saying  
23 is you did satisfy the dispute resolution mechanism. Is that  
24 your argument, that by the September 4 letter you did, in fact,  
25 satisfy the dispute resolution requirement?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7clPdanC

1 MR. MOORE: Yes.

2 MS. COSTELLO: As Ms. Grossman and I had conversations  
3 in which we were attempting to see if the city would give us  
4 some documentation showing that the training had occurred.

5 THE COURT: Ms. Grossman, did the plaintiff satisfy  
6 the dispute resolution by raising the issue on September 4?

7 MS. GROSSMAN: On the training?

8 THE COURT: In writing.

9 MS. GROSSMAN: The one piece on the training, yes.

10 But when I mentioned that the issue about the racial profiling  
11 was first -- first --

12 THE COURT: -- but we got lots of issues. Let's deal  
13 with training.

14 So they satisfied the dispute --

15 MS. GROSSMAN: -- yes.

16 THE COURT: What flows from the fact that they said  
17 the dispute resolution mechanism on the training point? And  
18 you raised some kind of defense.

19 MS. GROSSMAN: I'm sorry, your Honor, were you  
20 addressing me?

21 THE COURT: I said, what flows from the fact that they  
22 satisfied the dispute resolution mechanism.

23 MS. GROSSMAN: Our response to that, your Honor, was  
24 that they misinterpreted the agreement, that they are rewriting  
25 the agreement.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7clPdanC

1 THE COURT: Meaning procedurally, if they satisfied  
2 the dispute resolution mechanism by giving you 30 days, what  
3 flows from that, they are allowed to come to court.

4 MS. GROSSMAN: Yes.

5 THE COURT: So they alluded to come to court on that  
6 one because they satisfied the dispute -- and they want to say  
7 because of, in their view, of the training requirement being  
8 violated, that is a basis for this Court to extend supervision,  
9 and/or compel specific performance.

10 MS. GROSSMAN: Your Honor, the agreement is very  
11 specific. It permits specific performance. And then I would  
12 submit, your Honor, that they have to provide sufficient notice  
13 to the Court to enable all parties to perform. And to give  
14 seven days. And to give notice on this schedule is not what I  
15 believe is contemplated by the agreement.

16 THE COURT: Well, I don't know. They satisfied the  
17 dispute resolution mechanism, we all agree with that, on this  
18 issue, and they, then they have the right to come to court.  
19 And they have come to court.

20 I can say, based on their complaint regarding  
21 training, I need to have full briefings in order to give the  
22 Court an appropriate amount of time to decide whether there has  
23 been a violation. I have to extend the deadline to decide the  
24 motion properly.

25 MS. GROSSMAN: We would submit, your Honor, that  
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

39

7clPdanC

1 that's not the dispute -- that is not a remedy available under  
2 the agreement.

3 THE COURT: The remedy you agreed to is, they can  
4 bring a dispute to court after giving you 30 days notice.

5 MS. GROSSMAN: But there is no --

6 THE COURT: -- inherent power. I can't decide a  
7 motion that's not briefed. It is timely, it was brought before  
8 the expiration of this agreement, they satisfied the dispute  
9 resolution mechanism, the Court has the power to operate its  
10 own docket. I can't decide a motion, an important one, that's  
11 not briefed.

12 Is there any other exhausted issue, so to speak,  
13 besides the training one? Should we continue with the letter  
14 since they agreed that you -- what's the next one?

15 MS. GROSSMAN: Your Honor, I would just add on the  
16 training piece, there is no good-faith belief given. What we  
17 just walked through of the verification that there was an  
18 absence of language --

19 THE COURT: -- but Mr. Moore makes some practical  
20 point. There is no point in the city agreeing to do something,  
21 there is no way to find out whether they did comply. Otherwise  
22 you have a right without a remedy. You have a meaningless  
23 agreement.

24 That cannot be the intent of the parties to say, we  
25 will provide training but ha, ha, if we don't, you can't find

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300



40

7clPdanC

1 out and you can't take us to go task for it. That can't make  
2 sense.

3 MS. GROSSMAN: Your Honor --

4 THE COURT: -- but I am going to run out of time and  
5 patience shortly. I would like to move right past the training  
6 to the next exhaustive claim. Is there another --

7 MS. GROSSMAN: -- may I just be heard once on the  
8 training?

9 THE COURT: No.

10 MS. GROSSMAN: To talk -- we had negotiations on the  
11 document being --

12 THE COURT: -- no.

13 MS. GROSSMAN: -- bank added to the agreement and we  
14 rejected it --

15 THE COURT: -- no --

16 MS. GROSSMAN: -- the plaintiffs wrote --

17 THE COURT: -- no, I don't want to hear anymore about  
18 training. I want to hear other issues that are ready for the  
19 Court.

20 What other issues have you exhausted?

21 MS. COSTELLO: We are going to concede the other two  
22 issues, they are minor. We think the training is the --

23 THE COURT: -- the city says they have a right to  
24 stand on the technicality on the violation of the racial  
25 profiling policy, you didn't give them the notice till December

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

41

7clPdanC

1 3, so you can't bring that one to court in time for the  
2 stipulation of settlement to expire. So the only one that's  
3 live is the training.

4 If that's all we have to do between now and the 31st,  
5 maybe we can brief it and decide it. It is one issue not five,  
6 not four, not six.

7 I still say, putting a square peg in a round hole and  
8 all you have to do is bring a lawsuit, my interpretation of  
9 that protective order is that you have the documents till the  
10 end of January.

11 MR. FRANKLIN: Your Honor, can we take two minutes?

12 THE COURT: Please.

13 (Recess)

14 THE COURT: Mr. Moore.

15 MR. MOORE: Judge, after consulting with my  
16 colleagues, I think we have come to a position that if we  
17 have -- if the Court is willing to permit us to hold the data  
18 that we have until the end of January, 30 days after the  
19 expiration of this agreement, we would be willing to withdraw  
20 this motion at this point. And engage in this process of  
21 bringing another lawsuit or not.

22 THE COURT: I think I said it many times on this  
23 record, that that's my interpretation of this agreement. And  
24 that is the way I am ruling, that's what it said, 30 days after  
25 the termination of this case, which to me it finally

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

42

7clPdanC

1 terminates, termination December 31, '07, they remain  
2 confidential. But that doesn't mean you can't use them.

3 MR. MOORE: To the extent that some of the materials  
4 have already been made public, --

5 THE COURT: -- what's public is public. If you cite  
6 to the Rand study, publicly, nobody can criticize you for that.  
7 If they do, they weren't acting in good faith. If I can get  
8 the Rand study on the Internet, it is public --

9 MR. MOORE: -- you can go to the NYPD website, your  
10 Honor.

11 THE COURT: There you go, that's public. You can use  
12 that. And as I said before, I would accept it as a related  
13 case, which the plaintiff has the power to designate.

14 I think this current motion is withdrawn. Thank you.

15 ALL COUNSEL: Thank you, your Honor.

16  
17 o0o  
18  
19  
20  
21  
22  
23  
24  
25